CF0000079034

(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CRIMINAL APPEAL NO. 1798 /2000

Division Bench (Criminal)

Appellants :- (In Jail)

1. Nand Kumar @ Nandu son of Pardeshiram Yadav aged about 21 yrs

2. Basant son of Pardeshiram Yadav aged about 23 yrs.

3. Harishankar son of Pardeshiram Yadav aged about 20 yrs.

All residents of village Ghoghadih, Police Station Kota, Distt. Bilaspur (M.P.)

.Versus .

Respondent :- State of M.P.

CONVICTION	Sentence
under section 302 I.P.C. (Each appellant)	R.I. for life and fine of Rs. 3000/- In default fine, R.I. for 1 yrs.
Under section 325 I.P.C. (Each appellant)	R.I. for 1 yrs and fine of Rs. 500/- in default of fine R.I. for 3 months.
under section 323 I.P.C. (Appellant No.1)	R. I. for six months (6 months R.I.) and fine of Rs. 500/- in default of fine R.I. for 1 month.

(All sentence runs concurrently)

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CRIMINAL APPEAL UNDER SECTION 374 (2) CODE OF CRIMINAL PROCEDURE.

XI-HC-78

(45) A.F.R.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.A.No. 1798/00 **सन् 200**

(आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रीर के अन्तिम आदेश

Division Bench:
Hon'ble Mr. L.C. Bhadoo &
Hon'ble Mr. Dhirendra Mishra, JJ

1.3.2007

Mr. Abhay Tiwari, Advocate for the appellants.

Mr. Ashish Shukla, Additional Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer for the State.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J.

This appeal under Section 374 (2) of the Cr.P.C. is directed against the judgment of conviction and order of sentence dated 13th June, 2000 passed by the 4th Additional Sessions Judge, Bilaspur in Sessions Trial No.197/99 whereby the Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Section 302/34 of the I.P.C, for committing murder of Dashrath & Reeban; under Section 325 of IPC for causing grievous injuries to Bansilal, sentenced each of the accused persons to undergo rigorous imprisonment for life under Section 302 of IPC, to pay a fine of Rs.3,000/-, in default of payment of fine to further undergo rigorous imprisonment for one year and R.I. for one year under Section 325 of IPC, to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for three months respectively. Accused Nandu alias Nandkumar has also been convicted under Sectian 323 of IPC for causing simple injuries to Gangaprasad & Ramfal and sentenced to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश – 2 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

undergo R.I. for 6 months, to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for one month. However, accused Basant & Harishankar have been acquitted of the charge under Section 323 of the I.P.C. All the sentences have been directed to run concurrently. It is also directed that detention period during investigation and trial shall be set-off against the sentences imposed upon the accused persons.

The case of prosecution, necessary for disposal of this appeal is that on 2.3.1993 on the occasion of Holi festival in the Village Ghongadih, Dashrath Yadav, Reeban Yadav, Banshilal Yadav, Bahorik Satnami, Nandkumar Dhruv, Chandrahas Dubey and Reshamla (PW-1) were going to the house of Reshamlal (P-1) after celebrating Holi. On the way, near the house of Ganpat, accused Nandkumar Yadav & Khilawanram and others were started talking, in the meantime accused Nandkumar started assaulting Banshi Yadav, Dashrath & Reeban with the lathi, on which Nand Kumar Dhurve shouted, therefore, accused Nandkumar ran away. Thereafter, Bansilal, Dashrath & Reeban went to the house Reshamlal (PW-1), they were sitting there, however, within a short span of time Banshilal left the house. At that time, accused Nandkumar, Basant & Harishankar came abusing in the name of mother & sister holding lathis in their hands and started attacking Dasrath & Reeban with lathis & crowbar, they dragged them in the courtyard of the house, assaulted there also, as a result of which Dashrath & Reeban became unconscious and thereafter, the accused persons ran away. In the episode, Dashrath & Reeban sustained multiple injuries all over the body.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The incident was witnessed by Reshamlal (P-1), his wife Bitawan Bai (PW-4). Family members of Dashrath & Reeban came and they took them to the Bilaspur Hospital. Within an hour Sub Inspector Shri N.N. Kadiyam (PW-18) reached on the spot to whom Reshamlal (PW-1) gave Dehati Nalishi (Ex.P-1), based on that First Information Report Ex.P-35 was registered and the Investigating Officer took up the investigation. During investigation it was also found that accused persons attacked Gangaprasad & Ramfal apart from Banshilal. They were taken to the hospital, while on the way Dashrath succumbed to the injuries, whereas, Reeban succumbed to the injuries in the Bilaspur Hospital, therefore, the Investigating Officer after giving notice to the Panchas prepared the inquest Ex.P-32 on the body of Dasrath & Ex.P-33 on the body of Reeban. Their bodies were sent to the District Hospital, Bilaspur for postmortem examination, where Dr. R.K. Gupta (PW-11) conducted postmortem on the body of Dashrath, he noticed 8 injuries on the body of Dasrath and on dissection he noticed that 4th, 5th & 6th rib of Dasrath were fractured, right hand bones were also found fractured and he opined that death of Dasrath was homicidal in nature. He prepared postmortem report Ex.P-21. He also conducted postmortem examination on the body of Reeban Yadav, he noticed grievous injuries on various parts of the body of Reeban and on dissection it was noticed that left frontal bone was fractured, radius & ulna bones were also found fractured and he opined that cause of death of Reeban was multiple injuries & coma and death was homicidal in nature. He prepared postmortem report Ex.P-22. Injuries of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Banshilal were examined by Dr. G.P. Naidu (PW-10), he noticed two injuries on the body of Banshilal and the matter was referred to the Radiologist Dr. S. Chatterji (P-21), who took X-ray and found that 9th rib, ulna bone of forearm and 4th metacarpal bone of right hand were fractured. He gave his report Ex.P-44. Dr. N.K. Samdariya (PW-22) examined the injuries of Gangaprasad, he noticed simple injuries and prepared the report Ex.P-51. Dr. B. Chandani (PW-9) examined the injuries of Ramfal and he noticed two simple injuries. He prepared the report Ex.P-18.

In pursuance of the memorandum (Ex.P-7) given by the accused Nandkumar, a bamboo stick and one crowbar were taken into possession in pursuance of memorandum (Ex.P-10) given by Nandkumar. Blood stained full shirt & pant were taken into possession under Ex.P-11. While in police custody Harishankar gave memorandum Ex.P-14 and in pursuance of that under Ex.P-15 one Tendu club was taken into possession. Blood stained full pant and shirt were also taken into possession. While in police custody, accused Basant gave memorandum Ex.P-9 and in pursuance of that under Ex.P-13 bamboo club was taken into possession. At the instance of Basant under Ex.P-12 one blood stained lungi & gamchha were taken into possession.

After completion of investigation, charge sheet was filed against the accused persons in the Court of Chief Judicial Magistrate, Bilaspur, who in turn committed the case to the Sessions Judge, Bilaspur from where the 4th Additional Sessions Judge has received the case on transfer for trial. The prosecution in order to establish the charges against the accused persons

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

examined 24 witnesses. Statements of accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime, on the contrary, they were beaten up.

After hearing learned counsel for the respective parties and perusal of the record, learned Additional Sessions Judge convicted and sentenced accused/appellants, as aforementioned, however, acquitted accused Basant & Harishankar from the charge under Section 323 of the IPC.

We have heard Mr. Abhay Tiwari, counsel for the accused/appellants and Mr. Ashish Shukla, Addl. Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer for the State.

Learned counsel for the accused/appellants has not disputed homicidal death of Dasrath & Reeban. Moreover, from the ocular evidence of Reshamlal (PW-1), who has categorically stated that all three accused persons i.e. Nandkumar, Basant & Harishankar had assaulted deceased Dasrath & Reeban with lathis and crowbar. PW-4 Bitawan Bai also corroborated the above evidence of Reshamlal (PW-1) as also Dr. R.K. Gupta (PW-11), who conducted the postmortem on the body of Dasrath & Reeban has also stated that he conducted postmortem and death of these two persons were homicidal in nature. Therefore, in view of above, it is established that death of Dasrath & Reeban was homicidal in nature.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned counsel for the accused/appellants has also not disputed the injuries sustained by Gangaprasad, Bansilal & Ramfal. Moreover, their injuries are also established by the evidence of Dr. G.P. Naidu (PW-10), who examined the injuries of Banshilal as also the Radiologist Dr. S. Chatterjee, who has stated that he took X-ray of the injuries of Bansilal and as per X-ray report, ulna bone of forearm and 4th metacarpal of right hand of Bansilal were fractured. His report is Ex.P-44. Similarly, Ramfal (PW-14) has also stated that Nandkumar had assaulted him with the lathi. Dr. B.R. Chandani (PW-9), who examined the injuries of Ramfal, has stated that he noticed two injuries and his report is Ex.P-18. Similarly, Gangaprasad (PW-23) has also stated that Nandkumar had assaulted him with the lathi and his injuries were examined by Dr. N.K. Samdariya (PW-22), who has stated that Gangaprasad sustained two injuries simple in nature. His report is Ex.P-51.

Therefore, the grievous injuries sustained by Banshilal and simple injuries sustained by Ramfal & Gangaprasad are also established.

As far as the involvement of accused persons in causing grievous injuries to Bansilal is concerned, Reshamlal (PW-1) has categorically stated that after celebrating Holi when they were going towards his house, Bansi was following them. Nandkumar was coming from the front side, Bansilal & Nandkumar started quarreling. Thereafter, Banshi came to his house and when he was going to call peon Harprasad, Nandkumar, Basant & Harishankar came carrying lathi in their hands, they met Banshilal near the house of Sudhara Bai (PW-3) and attacked Banshilal. PW-2 Banshilal has stated that

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

when he was going to call the peon, by the time he reached near the house of Sudhara Bai, accused Nandkumar, Basant & Harishankar came carrying lathi in their hands, they attacked him as a result of which he fell down and they left towards the house of Reshamlal. He entered the house of Sudhara Bai (PW-3) and asked her to inform his son. Sudhara Bai has been examined as PW-3 and she has categorically stated that she saw the accused persons attacking Banshilal with lathi. In the cross-examination of these two witnesses the defence has not been able to elicit any circumstance which discredits the evidence of these two witnesses. Grievous injuries sustained by Banshilal have already been established by the evidence of doctor (PW-10) as also radiologist (PW-21). Therefore, the conviction of accused persons under Section 325 of IPC is based on legal & clinching evidence, which does not require any interference by this Court and we do not find any infirmity or illegality in the judgment of the trial court to that extent.

As far as the simple injuries caused to Ramfal & Gangaprasad is concerned, Ramfal has been examined as PW-14. He has categorically stated that the accused Nandkumar had assaulted him with the lathi and simple injuries of Ramfal has been proved by the doctor (PW-9), who examined these injuries. Gangaprasad has been examined as PW-23 and he has stated that accused Nandkumar had attacked him with the lathi on his right hand, he left towards the house of Sudhara Bai. The injuries sustained by him were examined by the doctor (PW-22) and his report is Ex.P-51.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Therefore, in view of the evidence of above injured witnesses namely Ramfal & Gangaprasad as also the medical evidence, it is established that accused Nandkumar was the author of injuries caused to Ramfal & Gangaprasad and therefore, he has been rightly convicted under Section 323 of IPC by the trial court and to that extent we do not find any illegality in the impugned judgment of the trial Court.

As far as involvement of accused/appellants in committing the murder of Dasrath & Reeban is concerned, Reshamlal (PW-1), who witnessed the incident, has stated that on the fateful day after celebrating Holi they were going towards his house, on the way Nandkumar met and started beating Banshilal. Thereafter, he sent Banshilal to call the peon Harprasad and when Banshilal was going to call the peon, near the house of Sudhara Bai accused persons attacked Banshilal. Thereafter, they came rushing to his house carrying lathis in their hands, they attacked Dasrath with lathis, which was seen by his wife Bitawan Bai also. She informed him that the accused persons are assaulting Dashrath and she asked him to go in the room and thereafter she closed the door. At that time, Reeban was also sitting in his house, the accused persons dashed open the door of his house, entered and started attacking Reeban with lathi. They dragged him to the courtyard and there also gave beating to him mercilessly. One crowbar was lying in his house, which was taken by Nandkumar and accused persons attacked Dasrath & Reeban with that crowbar. They assaulted Dasrath & Reeban almost on all parts of the body, blood started oozing out of the injuries,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -9-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

both of them became unconscious and thereafter accused persons ran away. Bitawan Bai (PW-4), wife of Reshamlal (PW-1) has also stated that Dashrath, Reeban and her husband came to her house in the afternoon, they were talking while sitting in the house. In the meantime, accused Basant, Nandkumar & Harishankar came rushing carrying lathi in their hands, she closed the door. Accused Nandkumar assaulted Dashrath with lathi. Thereafter, they dashed open the door of her house and all the three accused persons started assaulting Reeban with the lathi, they dragged him in the courtyard and there they gave mercilessly beating to Reeban, as a result of which he fell down, blood was started oozing out of the injuries of Dasrath and Reeban. Thereafter, the accused persons ran away.

Learned counsel for the accused/appellants argued that as far as the evidence of Bitawan Bai (PW-4) is concerned, she has categorically stated that she closed the door, therefore, there was no occasion for her to witness the assaults made by the accused persons. But we do not find any substance in this argument of learned counsel for the accused/appellants, for the reason that all the three accused persons were seen by Reshamlal & Bitawan Bai while entering their house, on which Bitawan Bai asked her husband Reshamlal to go inside the room and thereafter she closed the door and the door was dashed opened by the accused/appellants. Therefore, when the accused persons dashed opened the door and entered inside the house, there was every occasion to Bitawan Bai to witness the incident.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —10—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

PW-5 Parmeshwar Yadav, son of Dasrath, has stated that on the fateful day he was watching television at his residence, at that time one Narendra came and informed him about the quarrel, on which he went towards the school and saw that his father was lying in the courtyard of Reshamlal, there were injuries on the body of his father, his father's body was drenched with blood and he saw that in the house of Reshamlal all the accused persons were assaulting Reeban. Accused Nandkumar was holding crowbar and others were holding lathi.

The evidence of these witnesses is reliable, consistent and there is no contradiction in their evidence, moreover, the evidence of these witnesses has been corroborated by the medical evidence. In fact, this crime was happened in the house of PW-1 Reshamlal & PW-4 Bitawan Bai, their presence in their house was but-natural. It has not come in the cross-examination that these two witnesses were having any animosity against these accused persons so as to implicate them in a false case.

PW-11 Dr. R.K. Gupta, who conducted the postmortem examination, has categorically stated that there were eight injuries on the body of Dasrath and so many injuries on the body of Reeban, therefore, the postmortem reports and the evidence of Dr. R.K. Gupta corroborates the evidence of PW-1 Reshamlal, PW-4 Bitawan Bai & PW-5 Parmeshwar Yadav. Moreover, the lathi & crowbar, weapons of offence, were recovered at the instance of accused persons and the doctor examined these lathis & crowbar, has stated that the injuries found on the body of Dasrath &

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —11—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Reeban could be caused by these weapons except Injuries No.1, 2 & 7 of Reeban and Injury No.1, 5, 6 & 7 of Dasrath.

Therefore, in view of the above ocular and medical evidence, the involvement of accused persons in causing injuries over the person of deceased Dashrath & Reeban is established beyond reasonable doubt.

Learned counsel for the accused/appellants argued that accused Nandkumar also sustained injuries and in his right of private defence, he assaulted and only lathis were used, therefore, the offence against the accused persons does not travel beyond Section 304-II of IPC.

In the first instance, the nature of injury sustained by Nandkumar has not been established by adducing injury report into evidence or examining the doctor that what kind of injury was sustained by Nandkumar. There is nothing in the evidence that injury was caused by Dasrath or Reeban. In order to exercise the right of private defence accused Nandkumar was required to establish that there was a reasonable apprehension of danger to his body for causing grievous injury or death.

Sections 102 & 105 of IPC deal with commencement and continuance of the right of private defence of body as well as property. It commences as soon as the reasonable apprehension of danger to the body arises for an attempt, or threat, to commit the offence, although the offence may not have been committed, but not until there is reasonable apprehension. In other words, the right lasts so long as the reasonable apprehension of the danger to the body continues.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —12—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of material on record. In this case, it is evident from the evidence of Reshamlal (PW-1) & Bitawan Bai (PW-4) that the accused persons were aggressors, they went to the house of Reshamlal, attacked Dasrath & Reeban in their house, therefore, there was no right of private defence available to the accused persons. As far as the intention of accused persons is concerned, in the first instance the accused persons went to the house of Reshamlal and there they gave merciless beating to Dasrath & Reeban. Even crowbar which was lying in the house of Reshamlal was picked up by Nandkumar, that was also used as weapon of offence and it is evident from the postmortem report Ex.P-11 that injuries caused to Dashrath were eight in numbers as a result of which his right hand was fractured, humorous bone was fractured, 4th, 5th & 6th ribs of Dasrath were fractured. Similarly, Reeban was also given merciless beating, his radium ulna bone was fractured, parietal bone and frontal bone were also fractured. Therefore, the manner in which merciless beating was given by the accused persons to Dashrath & Reeban establishes that the accused persons attacked the deceased persons with the intention to cause

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —13—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

their death. Dasrath died on the way when he was being taken to the hospital and within a short span of time Reeban also died in the hospital. Therefore, the accused persons have rightly been convicted for commission of offence under Section 302/34 of the IPC.

For the foregoing reasons, we do not find any illegally or infirmity in the impugned judgment of the trial court. The appeal being devoid of merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan/-